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pmIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISIONCLERK, U.S. DISTRICT COURT
By _____ DeputyLisa Biron,
Plaintiff

v.

Warden Jody Upton, et al.,
Defendants

Civil Action No. 4:19-CV-322 - A

Motion to Strike Under Rule 12(f)

Defendants, in their Motion to Dismiss, have referenced and quoted records and information from a confidential State of New Hampshire juvenile dispositional proceeding. Specifically, Defendants quote language¹ from In re R.B. [redacted], No. 656-JV-326, at 3-4 (N.H. 9th Cir. Fam. Div. – Manchester) (order signed Dec. 4, 2012), and, in part, rely on this confidential record in support of their argument for dismissal at page 2 of Defendants' Motion to Dismiss, and at page 19, section (b), first paragraph where they reference taking "judicial notice" of findings of "a state family court" in support of qualified immunity.

Rule 12(f) of the Federal Rules of Civil Procedure states that a "court may strike from any pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Courts have looked to Rule 12(f)'s standards when addressing requests to strike information contained in a motion to dismiss. See, e.g., Lake Charles Harbor & Terminal Dist. v. Reynolds Metal Co., no. 2:17-CV-1114, 2019 U.S. Dist. LEXIS

¹ Ms. Biron does not quote the language again in this motion in order to avoid filing this Motion to Strike under seal.

25403 (W.D. La. Jan. 23, 2019).

In New Hampshire, proceedings relative to child protection, such as In re R.B., are governed by R.S.A. 169-C, Child Protection Act, which mandates confidentiality. Specifically, R.S.A. 169-C:25-Confidentiality, requires that "[t]he court records of proceedings under this Chapter shall be kept in books and files separate from all other court records. Such records shall be withheld from public inspection . . . [and] all case records . . . relative to abuse and neglect shall be confidential . . ." R.S.A. 169-C:25, I(a) & III (emphasis added).

It is unclear how these confidential case records were originally obtained, but the United States Attorney's Office has wrongfully publicized said records in several proceedings before the Northern District of Texas.²

Relevant to the instant case and this Motion, the information based on records obtained from the confidential juvenile proceeding is an insufficient defense, immaterial, and impertinent to the civil action brought by Ms. Biron, and it would be inappropriate for this Court to take "judicial notice" of any matters contained therein. As stated, the juvenile matter was and is confidential and none of the records derived therefrom should be referred to or relied upon as a defense in this matter.

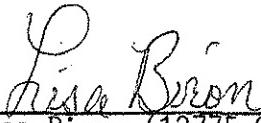
WHEREFORE, Ms. Biron requests this Honorable Court strike any reference to In re R.B., 656-JV-326 from Defendants' Motion to Dismiss and

2 The record that Defendants quote in their Motion to Dismiss was first publicized by the United States Attorney's Office for the Northern District of Texas in the appendix to its response brief in case no. 4:14-CV-823-0. This wrongful publication led to further publication in case no. 4:15-CV-205-0. Ms. Biron has brought this to the attention of the court and AUSA Stoltz, but he continues to quote from and rely on records from this confidential proceeding.

order them to cease referring to, or relying on, any such records, orders, or "state court findings" originating therefrom, and to grant such other relief as is deemed just and equitable.

Respectfully submitted

5/7/19
Date


Lisa Biron
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Certificate of Service

I hereby certify that a copy of the foregoing Motion was mailed to AUSA Brian Stoltz on this date.

5/7/19
Date


Lisa Biron
Lisa Biron

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